

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

W.W. GRAINGER, INC.

Employer

and

Case 12-RC-9321

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 947

Petitioner

DECISION AND ORDER

The Employer, W.W. Grainger, Inc., operates a warehouse, also referred to as a distribution center, located in Jacksonville, Florida, where it employs approximately 137 employees.¹ The Petitioner, International Brotherhood of Teamsters, Local 947, filed a petition with the National Labor Relations Board under Section 9(c) of the Act seeking to represent a unit of full-time and regular part-time production pickers, packers, loaders, receivers, unloaders, offloaders, put-away, reslotters, replenishers, and LTL employees in the Grade 5 position of Distribution Center Associate (herein called DCAs), employed at the Employer's Jacksonville facility.² A hearing officer of the Board held a hearing, and the parties filed briefs with the Regional Director.

As set forth in their positions taken at the hearing and in the briefs, the parties disagree as to whether or not (1) approximately eleven DC (Distribution Center) support

¹ The parties stipulated as follows: The Employer, incorporated in the State of Illinois and authorized to do business in the State of Florida, is engaged in the business of distribution of maintenance, repair, and industrial supplies to commercial, industrial, contractor, and institutional customers. During the past 12-month period ending April 30, 2008, the Employer purchased materials and/or supplies directly from sources outside the State of Florida, which materials and/or supplies were delivered to the Employer's Jacksonville, Florida facility. During the same period of time, the Employer performed services directly to customers located outside the State of Florida valued in excess of \$50,000.

² The only part-time employees at the Employer's facility are DCAs.

specialists, approximately five distribution logistic specialists, approximately eight team leads, the flow coordinator,³ three maintenance technicians and two maintenance generalists should be excluded from the petitioned-for unit of DCAs. The Petitioner contends that none of these employees share a community of interest with the DCAs sufficient to warrant their inclusion in the unit. The Petitioner further contends that the DC support specialists, distribution logistic specialists, team lead and flow coordinator are more closely aligned with management than with the DCAs, and the Petitioner effectively asserts that the team leads and flow coordinator are supervisors within the meaning of Section 2(11) of the Act. The Employer takes the position that the petitioned-for unit is inappropriate, that the DC support specialists and distribution logistic specialists are plant clerical employees, that the team leads and flow coordinator are not statutory supervisors, and that the smallest appropriate unit that includes the DCAs should also include the DC support specialists, distribution logistic specialists, team leads, flow coordinators, maintenance technicians and maintenance generalists.

There are approximately 109 DCAs in the unit sought by the Petitioner, whereas the unit that the Employer contends is the smallest appropriate unit includes about 137 employees. The Union has decided that it will not proceed to an election in any alternate unit that I find appropriate.⁴

I have considered the evidence and the arguments presented by the parties on each of the six disputed job classifications. As discussed below, I have concluded that the DC support specialists and distribution logistic specialists should be included in the unit. I have also concluded that the team leads and flow coordinator are not statutory supervisors and should be included in the unit. Accordingly, and because the Petitioner

³ There is only one flow coordinator, who coordinates order picking, but outbound operations team leads may perform the flow coordinator function at times.

⁴ By letter dated May 23, 2008, the Union changed its prior position at the hearing that it would go to an election based upon the Regional Director's determination on an appropriate unit.

will not proceed to an election in any alternate unit that I find appropriate, I have decided to dismiss the Petition.

Finally, I have not made a determination regarding the unit placement of the maintenance technicians and maintenance generalists because the record lacks sufficient evidence to determine whether or not they should be included in the unit. The issue concerning the maintenance employees does not affect the overall determination that the petitioned-for unit is inappropriate and the petition should be dismissed.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that support each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer is a wholesale business-to-business distributor for facilities, maintenance and operating materials. From its Jacksonville distribution center (herein called the DC) the Employer replenishes most of its branches located in Florida with inventory and ships customer orders for those branches. The DC has been open since January of 2003. For the most part, it is in operation 24 hours a day, five days per week.

The Employer's night shift performs inbound operations and the day shift performs outbound operations. The inbound operation employees begin work at either 8:30 p.m. or 10:00 p.m. and finish at approximately 6:00 to 6:30 a.m. They are supervised by the inbound operations manager. The inbound operations primarily involve unloading freight from trailers, staging the freight, scanning the freight based on the locations where it will be stocked, and putting the freight away in designated areas of the warehouse.

The outbound shift begins at approximately 9:00 a.m. and ends at approximately 7:00 to 7:30 p.m. In addition, a branch replenishment group that is considered part of the outbound operations starts its shift at 4:00 a.m. The outbound operations involve getting the freight ready for shipping. The outbound operations primarily involve picking orders from the stocked items, packaging orders and loading packages into trailers for shipment. Orders are shipped directly to customers and also to the Employer's other branches in the United States for the purpose of replenishing stock.

The inbound operations manager, the outbound operations manager, the facilities manager, the continuous improvement manager, the human resources manager and an administrative assistant report to the director of distribution, who is in overall charge of the DC.⁵ There are five process managers, including two who report to the inbound operations manager and supervise unloading and putting away products and two who report to the outbound operations manager and supervise picking, packing and shipping.⁶ The fifth process manager works during the outbound shift and supervises the reslotting team, consisting of a mix of DCAs and the distribution logistics specialists.⁷ The inbound operations manager also supervises the supply chain analyst. The process managers and the supply chain analyst supervise a mix of DCAs, DC support specialists, team leads and/or the flow coordinator, except for the process manager who supervises the reslotting team.

⁵ Although the parties did not specifically stipulate on the record to exclude the director, continuous improvement manager or the human resource manager from the petitioned-for unit, neither party argues that these classifications should be included in the unit, and the record establishes that the occupants of these positions are supervisors within the meaning of the Act. The parties stipulated that the facilities manager is a supervisor within the meaning of the Act and should be excluded from any unit found appropriate. The record shows that the five maintenance employees report to the facilities manager. The parties also stipulated to exclude the supply chain analyst from any unit found appropriate.

⁶ The parties stipulated to exclude process managers from the unit because they are supervisors within the meaning of the Act.

⁷ Although the record is not entirely clear, it appears that the process manager who is in charge of the reslotting team reports to the outbound operations manager.

The inbound and outbound employees, including DCAs and DC support specialists, use handheld RF (radio frequency) units, which are handheld computers through which all work is assigned and performed. The RF units are company property, and the employees sign them in and out from the same area of the DC. The RF units are used for a variety of tasks, including scanning in products, scanning barcode labels on packages, printing address labels and packing lists, performing inventory functions, and checking on discrepancies in orders. The DC is composed of dock areas, warehouse storage racks, bin locations and a damages area. The DC also has separate areas for hazardous materials, maintenance equipment, the electrical room, offices, training rooms, break rooms, locker rooms and restrooms. DCAs do not have general access to the general office, the maintenance room, or the electrical room, and it appears that only maintenance employees have general access to the latter two areas.

The maintenance department, composed of two maintenance generalists and three maintenance technicians,⁸ work staggered shifts so that there is 24-hour coverage of the facility. The maintenance employees have a separate maintenance area where equipment is kept, and they are supervised by the facilities manager. The maintenance employees perform various functions, from changing light bulbs and forklift batteries to fixing and maintaining air conditioning units and conveyor belts.

All of the hourly-paid day shift and night shift employees have grades used primarily to delineate their level of performance and expertise, and to establish a promotional path. Hourly paid employees at the Jacksonville DC are in grades 5 through 9, referred to by the Employer as NEX grades. DCAs are graded as NEX 5, the DC support specialists as NEX 6, the distribution logistic specialists as NEX 7, the team leads and flow coordinator as NEX 8, the maintenance generalists as NEX 7 and the

⁸ One of the maintenance technicians specializes in repairing power equipment, another specializes in repairing conveyor belts, and the third specializes in repairing heating, ventilation and air conditioning equipment.

maintenance technicians as NEX 9. Although the record does not contain exact wage rates, there are minimum, middle and maximum pay rates for each pay grade.

Employees in higher numbered pay grades are generally higher paid, but it appears that the pay ranges overlap with each other somewhat so that, for example, the maximum pay for a DCA (NEX 5) may be slightly higher than the minimum pay for a DC support specialist (NEX 6).⁹ All hourly-paid employees record their work time at computer terminals or kiosks at various locations in the DC.

The parties agree that the following positions should be excluded from the unit because they are supervisors within the meaning of Section 2(11) of the Act: process managers, supply chain analyst, facilities manager, maintenance manager, office/administrative clericals, confidential employees, and professional employees.

To decide if the DC support specialists, distribution logistic specialists, team leads and flow coordinators share a community of interest with the DCAs and must be included in the unit with DCAs, I will examine and compare the duties and skills of the employees in the various job classifications, their work locations, wages and benefits, the degree of employee interchange, contact and common supervision, the extent the Employer's operations are functionally integrated, and other factors considered by the Board in making unit determinations.

II. DISTRIBUTION CENTER ASSOCIATES

There are approximately 109 Distribution Center Associates (DCAs), all at grade NEX 5. The DCAs are directly supervised by the process managers. The DCAs who

⁹ The director of the DC estimated that DCAs (NEX 5) earn from \$13.04 per hour to \$16 or \$17 per hour, that maintenance generalists (NEX 7) earn about \$17 per hour, and that maintenance technicians (NEX 9) earn about \$20 per hour. However, he conceded that he did not recall the precise wage rates for each grade.

work in inbound operations unload, stage and shelf incoming freight, whereas the DCAs who work in outbound operations pick and pack orders and work on the reslotting project, which is described in more detail below. The DCA position is the entry level position for warehouse employees at the DC. Experience in warehouse or logistics operations and experience operating power equipment are preferred, but not required. DCAs, like all of the employees at the DC, receive mostly on-the-job training to learn their job functions. The training is often provided by team leads, and sometimes by a DCA who is designated as the DC trainer. DCAs operate power equipment, such as forklifts, tuggers, and multilevel pickers known as OPs which have platforms that raise and lower employees. Team leads also frequently operate the Employer's power equipment in performing warehouse work, and DC support specialists and distribution logistics specialists also operate power equipment on occasion.

DCAs on the night shift generally either unload or shelf items. DCAs on the day shift are assigned to a picking, packing or shipping team, each of which is headed by the flow coordinator, who is the equivalent of a team lead, or a team lead.

The job description of the DCA states that the DCA performs "tasks associated with the receipt, storage, and shipment of products" and uses "established procedures, tools, equipment, and technologies to complete transactions related to inbound and outbound processes with a distribution center." According to the job description, the functions of the DCAs include picking, packing, replenishing, auditing, shipping and making boxes. The DCA must have a high school diploma or equivalent and a minimum of six to twelve months of warehouse or related experience, be able to operate computerized scanning equipment and be willing to operate industrial power equipment.

III. DC SUPPORT SPECIALISTS

There are approximately eleven DC support specialists engaged in various functions dealing with the distribution process, the majority of whom work primarily on the warehouse floor and who, together with DCAs and team leads, are supervised by the process managers and the supply chain analyst. Three DC support specialists spend most of their work time at cubicles with phones and computers in the general office area, dealing with customers and the Employer's branches, and are directly supervised by the outbound operations manager.

The DC support specialist job description states that the DC support specialist reports to the process manager and "provides operations support, reporting and data analysis functions that are needed to support Distribution Center activities." The job description also states that the DC support specialist ensures inventory accuracy, investigates and reconciles inventory discrepancies, monitors and provides support for intransit process, inputs data, organizes printer outputs, prepares packing and shipping documents, performs the order close out function and performs some routine clerical functions. In addition, the job description states that the DC support specialist has the ability to perform the will-call function and provides backup support for DCAs. Moreover, the job description states that the position deals directly with the work team and interacts with DCAs, freight carriers, supported branches and the leadership team. In terms of job requirements, the DC support specialist must have a high school diploma or equivalent, be able to lift up to 75 pounds depending on job assignments, be able to operate warehouse vehicles, and have intermediate to advanced computer skills.

The day-to-day activities of approximately three DC support specialists who work on inbound operations involve performing different functions, including quality auditing of the put-away, sort and offload processes, trouble shooting, cleaning up "exceptions" (products that arrive without the proper paperwork), handling damaged freight,

performing trailer audits and processing customer and branch returns. The DC support specialists also put products away or offload products when they are troubleshooting, and they work with DCAs to solve problems that occur with the freight. Some of the inbound DC support specialists are supervised by the supply chain analyst, who also supervises DCAs.

There are approximately seven DC support specialists working on outbound operations. The three who are directly supervised by the outbound operations manager and work primarily, but not exclusively, in the general office area, deal with customers and branches regarding orders, track LTL orders or UPS shipments, and perform the close-out function, which involves, for example, researching why there is an open order at the end of the day. Employees from other branches of the Employer's operations may call one of these DC support specialists to cancel an order or require special handling of an order. Although these outbound DC support specialists spend most of their work time in the general office area dealing with customers and branches, they also spend time on the warehouse floor working alongside the DCAs. At times, these DC support specialists must be on the warehouse floor in order to pick and pack expedited orders, check and verify stock, do cycle counts of inventory to verify that inventory is available for an order, and resolve discrepancies. These outbound DC support specialists also print out some reports for the process managers.

There are also approximately four DC support specialists working in outbound operations who are supervised by process managers and who track the inventory to make sure that orders are done correctly and in a timely manner. In addition to using RF units, these DC support specialists also have access to computers located in the warehouse. The DC support specialists ask for DCAs' assistance every day to resolve problems with stock, vendor labels, quantity and mixed freight. The DC support specialists, in varying degrees, perform some of the same tasks as DCAs. The DC

support specialists may have to unload a package from a trailer or pull an order from the shelves in order to address a specific problem with that freight. In addition, if there is a shortage of DCAs, the DC support specialists will be occasionally assigned to perform the same functions as the DCAs. One DCA testified that when he worked in packing and had problems with shipments, DC support specialists constantly came by to check for errors and solve his problems and that they checked the accuracy of the orders being packed.

The Employer's recordkeeping is paperless, and, like the DCAs, the DC support specialists use handheld RF computer units. The DC support specialists also audit about four percent of the orders picked by DCAs, performing that function with the RF units in much the same manner as DCAs sometimes double-check their own work. Although information gleaned from these audits by managers may be used in evaluating the performance of DCAs and even in discipline of DCAs by managers, there is no evidence that the DC support specialists have any role in such evaluations or discipline. Rather, they merely record information for the purpose of determining productivity, accuracy and inventory.

The factors considered by the Board to determine if positions share a community of interest are common supervision; similarity in employees' skills and functions; similarity in the scale and manner of determining wages; similarity in benefits and working conditions; contact among employees; degree of functional integration; interchange; geographical proximity; and the history of any collective bargaining involving the parties. See Turner Industries Group, LLC, 349 NLRB No. 42, 42 (2007); Kalamazoo Paper Box Co., 136 NLRB 134, 137 (1962).

Significantly, all of the current DC support specialists were promoted from the DCA position, and most of the DC support specialists spend most of their work time on the warehouse floor with the DCAs, sometimes performing the same type of work as the

DCAs. In addition, most of the DC support specialists and the DCAs are commonly supervised by process managers. Although some of the DC support specialists report to the operations manager, the work of all DC support specialists is functionally integrated with the work of DCAs in the Employer's distribution process. For example, the work of DC support specialists is necessary to make sure there is sufficient inventory, to resolve discrepancies in orders, expedite rush orders, and make sure that cancelled orders are not shipped.

The daily contact between DC support specialists and DCAs and the functional integration of the two positions in the flow of work in the DC is also established by the fact that DCAs scan information about damaged freight using their RF units in the damaged freight area and DC support specialists take that damaged freight and process it using their RF units. In addition, if there is a question from a customer regarding freight, a DC support specialist must go to the warehouse floor and pull the freight from the same shelf on which the DCA has placed the freight.

The DC support specialists, like the DCAs, are paid hourly and earn a starting wage that overlaps with the wage rates of the DCAs. The DC support specialists also have substantially the same supervision as the DCAs and receive the same benefits; they use the same break room, locker room and training rooms, and are subject to the same progressive disciplinary policy and reward/recognition program as DCAs.

I find that the DC support specialists should be included in the unit because they share a strong community of interest with the DCAs. The community of interest between the DCAs and DC support specialists arises from their common supervision, functional integration, substantial work-related contact, the consistent practice of transferring experienced DCAs to DC support specialist positions, similar wages, and common working conditions and benefits. See Jacob Ash Co., 224 NLRB 74 (1976); Scholastic Magazines Inc., 192 NLRB 461 (1971).

Although the Petitioner contends that the DC support specialists should be excluded from the unit because they perform office clerical work, the DC support specialists' duties involve mostly plant clerical functions related to the warehouse work performed by the DCAs, rather than office clerical functions. See S&S Parts Distributors Warehouse, Inc., 277 NLRB 1293, 1296 (1985) (employees' responsibilities of recording returned merchandise and monitoring inventory are duties of plant clericals appropriately included in warehouse units; employees in question also relied on information provided by order pullers in updating inventory).

Contrary to the Petitioner's arguments, although some DC support specialists prepare auditing reports that are provided to management, the DC support specialists do not monitor employee performance, nor are they in an adversarial position to the DCAs. Rather, the reports prepared by or based on information input by the DC support specialists include an inventory sync report, a tracking report and trouble-ticket spreadsheets, all of which are given to process managers. There is insufficient evidence to show that any of the DC support specialists have ever written up or otherwise been involved in the discipline of DCAs, or confronted them regarding quality errors.

The Petitioner's reliance on Virginia Mfg. Co., Inc., 311 NLRB 992 (1993) and Mitchellace, Inc., 314 NLRB 536 (1994) is misplaced. In Virginia Mfg., the Board excluded a production control clerk from a production and maintenance unit because certain of his duties placed him in an adversarial position to the interests of the production employees. Thus, in addition to keeping track of inventory and production counts by recording data based on work performed by production employees, the production control clerk in Virginia Mfg., unlike the DC support specialists in the instant case, questioned production employees regarding the reasons their production percentages were low; the Board also found it significant that, on his own initiative, he conducted time studies of production operators in the performance of their work and

gave the results to his supervisor for the possible adjustment of production standards. Also, there is no indication that the production control clerk in Virginia Mfg. assisted production employees in getting production work done, unlike the Employer's DC support specialists, who are involved in assisting in such warehouse functions as expediting orders, trouble shooting when there are discrepancies on orders, cleaning up "exceptions" (products that arrive without the proper paperwork), ensuring that cancelled orders are not shipped, handling damaged freight, and processing returns.

Similarly, in Mitchellace, where the Board determined that the data entry clerks were office clerical employees rather than plant clerical employees, the data entry clerks reported to the office manager, participated in office employee functions, rarely entered the production area, and conducted observational monitoring of machine and operator efficiency, the results of which were used to set "production norms." In addition, production employees asked the data entry clerks about problems meeting production standards and requested that the production standards be reevaluated. The DC support specialists do not perform any of the functions of the data entry clerks in Mitchellace. In addition, the reports prepared by the Employer's DC support specialists are not based on their observations of the DCAs' work. Rather, those reports and audits are based upon information that has been downloaded into the Employer's recordkeeping system by the DCAs themselves.

In summary, the DC support specialists are not office clerical employees, and also they do not monitor employee performance or perform duties which place them in an adversarial position to the DCAs.

Although the Petitioner contends that the DC support specialists use independent judgment to determine whether DCAs commit quality errors, the DC support specialists can only make decisions about whether to mark an error regarding packing as a "soft error" such as writing a part number on a product, or as a "hard error" such as having a

wrong item or wrong quantity. There is insufficient evidence to establish that the DC support specialists exercise independent judgment in making such decisions, as the Petitioner contends. Rather, it appears that these decisions are routine and clerical in nature, and the DC support specialists make no recommendations regarding discipline or other employment actions to be taken based on errors by DCAs. Moreover, DC support specialists do not observe, watch or question employees regarding production standards.

Although some DC support specialists use a cubicle, phone and/or computer, this is required as part of their role in the distribution process, just as DCAs and other employees, including DC support specialists, use the handheld RF unit computers to perform their job functions. Moreover, contrary to the Petitioner's arguments, the evidence does not establish that the DCA work performed by DC support specialists is voluntary. Although DC support specialists are subject to different performance criteria than DCAs because they perform a variety of functions, this fact is outweighed by the factors discussed above that support a finding that the DC support specialists share a community of interest with the DCAs.

Moreover, the fact that the auditing functions of the DC support specialists are performed in a warehouse, rather than in a manufacturing plant, and the fact that only 4% of the orders are audited, does not require a different outcome. See S&S Parts Distributors Warehouse, Inc., 277 NLRB 1293 (1985)(involving a distributor of automotive parts where the Board held that special order takers and customer credit clerks who also recorded returned merchandise and monitored inventory were plant clerical employees appropriately included in warehouse units).

Finally, although the distribution support specialists have access to all of the scans made by the DCAs, this is necessary for their troubleshooting and inventory functions and does not affect any possible confidentiality of the information or establish

that they are confidential employees who should be excluded from any unit found appropriate. See Virginia Mfg., above (Board, in affirming the hearing officer on different grounds, did not rely on the hearing officer's conclusion to exclude an employee from the unit because they were in possession of information that was arguably confidential); Fairfax Family Fund, Inc., 195 NLRB 306, 309 (1972) (absent a showing that initial credit screeners and final credit analysts participated in establishing any management or labor policies, access to restricted business information is insufficient to establish that an employee is confidential or managerial). Rather, the exclusionary definition of a confidential employee is limited to those who (1) share a confidential relationship with managers who "formulate, determine, and effectuate management policies in the field of labor relations"; and (2) assist and act in a confidential capacity to such managers. NLRB v. Hendricks County Rural Electric, 454 U.S. 170, 189 (1981); Waste Management de Puerto Rico, 339 NLRB 262 (2003); B.F. Goodrich Co., 115 NLRB 722, 724 (1956).

IV. DISTRIBUTION LOGISTIC SPECIALISTS

There are approximately five distribution logistic specialists at grade NEX 7. They are in charge of reconfiguring storage areas within the distribution center to improve the Employer's productivity. For example, they make sure products that are frequently picked for orders are easier for the DCAs to reach than products infrequently picked for orders.

All of the distribution logistic specialists and a group of DCAs are currently performing work on a project as the reslotting team, physically moving and reconfiguring shelves in the warehouse. The distribution logistic specialists and the DCAs on the reslotting team work on the day shift and are commonly supervised by a process

manager. The work of the reslotting team involves both the inbound and outbound operations. The distribution logistic specialists physically move freight around within the warehouse, together with the DCAs on the reslotting team. The distribution logistic specialists and the DCAs have meetings with their process manager regarding their work. If the distribution logistic specialists were not working on the reslotting team, their function would involve audits, inventory and order accuracy, performing job functions similar to the work currently performed by the DC support specialists. All of the distribution logistics specialists were previously employed by the Employer as DCAs.

The job description for the distribution logistic specialists states that their purpose is to “optimize storage capabilities/practices of the DC and ensure inventory slotting maximizes DC storage and space effectiveness and efficiency and supports/enhances the performance expectations of the DC.” In this regard, the major responsibilities listed on the job description include developing slotting strategies, maximizing square footage utilization of the warehouse, conducting random slotting audits to share with managers, performing ongoing slotting analyses, monitoring and reporting discontinued, damaged or scrap inventory, and performing cycle counts. Notably, the job description also states that the distribution logistic specialist is responsible for “other duties as assigned.” Thus, the current work being performed by distribution logistic specialists on the reslotting project reflects that the Employer can transfer these employees to other positions in the warehouse, as needed.

The distribution logistic specialists receive the same benefits and have the same working conditions as the DCAs, DC support specialists and team leads. The distribution logistic specialists are paid hourly, like the other employees. Although there is no precise wage rate for the distribution logistic specialists, employees in each hourly-paid job classification have a starting, middle and high wage rate, and there are overlaps in wage rates from grade to grade.

I find that the distribution logistic specialists should be included in the unit. There is functional integration between the distribution logistic specialists and the DCAs. The distribution logistic specialists and the DCAs work together performing the physical work of moving items in the warehouse in connection with the reslotting project. They have the same supervisor, are paid similar wages, receive the same benefits and are subject to the same working conditions.

Although the distribution logistic specialists may return to auditing, inventory and similar functions after the completion of the reslotting project, those functions would be akin to the work performed by the DC support specialists, who, as set forth above, share a community of interest with the DCAs. The current common duties of the distribution logistic specialists and the DCAs on the reslotting project demonstrate that they share a community of interest, notwithstanding the temporary nature of that project and the fact that the distribution logistic specialists will return to auditing and inventory functions.

Similarly, the use of a computer in the general office area by distribution logistic specialists does not negate their community of interest with the DCAs. In this regard, the job description for distribution logistic specialists does not state that they must have “advanced computer literacy skills,” as the Petitioner contends. Rather, the job description only requires the ability to use a computer and understand the distribution process.

Although DCAs (and employees in all other job classifications) must go through a process to receive a promotion to distribution logistic specialist, and distribution logistic specialists are not exclusively evaluated on a production or quality standards as the Employer evaluates DCAs, this is insufficient to warrant exclusion of distribution logistic specialists from the unit. Contrary to the Petitioner’s arguments, the distribution logistic specialist position is not closely aligned with management, and the fact that there may be a progression path leading from the distribution logistic specialist position to a

supervisory position is also insufficient to warrant the exclusion of distribution logistic specialists from the unit. In this regard, employees in all of the various job classifications can apply for a supervisory position.

The fact that the job description for the distribution logistic specialists states that the job requirements include “general business experience” does not diminish their community of interest with the DCAs. There is no indication that distribution logistic specialists are required to have formalized outside training. In fact, the job description states that the distribution logistic specialist must have a high school diploma or GED, which is the same as the minimum requirements for a DCA. Finally, although the job description states that the distribution logistic specialist impacts on company effectiveness and profitability, this appears to reflect the role of making sure products are stored properly within the distribution process and does not establish that distribution logistic specialists are closely aligned with management, or form a basis for excluding them from the unit, as the Petitioner contends.

V. TEAM LEADS AND FLOW COORDINATOR

I will consider the team leads and the flow coordinator in the same section because the team leads sometimes perform the flow coordinator function, and because the record establishes that the team leads and the flow coordinator have very similar duties and relationships to employees in the other job classifications. There are approximately eight team leads and one flow coordinator, who are at the NEX 8 pay grade. All of the team leads and the flow coordinator are former DCAs, and they report to process managers. Team leads and the flow coordinator are experienced employees and act as resources for the DCAs on their teams with respect to questions as to how to

perform the work. They also provide on-the-job training for DCAs, working alongside the DCAs.

The job description for the team leads states that they assist the manager in coordinating the activities of “non-exempt” employees to accomplish daily work assignments. According to the job description, their major responsibilities include leading the daily operations of the department, assisting in planning the daily workload of the department, actively participating in completing the daily workload, including picking orders, replenishing picking lines, loading and unloading trucks, and training new employees. Their job requirements, like those of the DCAs, include a high school diploma or equivalent. A job posting for the flow coordinator position that was introduced in evidence by the Petitioner describes duties almost identical to those in the job description for the team lead.

On the inbound operations side, the offload team lead works with the DCAs to ensure the timely unloading of products from trailers and positioning of products for put-away to warehouse locations. The put-away team lead ensures the timely completion of the put-away process. The team leads also specify the doors of the warehouse where the DCAs should place products.

In the outbound operations, the flow coordinator monitors the flow of orders as they make their way from picking to packing and assigns resources to make sure that the work gets completed in a timely manner. The flow coordinator assigns DCAs to work in different areas of the DC, picking orders from bins, the bulk area or the hazmat room, and to operate certain equipment based on the DCAs’ knowledge of the items in a particular work area or depending on which equipment they have enough experience to operate. For example, if a picker is skilled in operating a particular piece of equipment that is needed to handle a particular product, the flow coordinator will assign an order for that product to that picker. If the order must be picked from the bin module, the flow

coordinator will assign the work to the DCAs who work in the bin module. The flow coordinator has a desk with a phone located in the main aisle of the warehouse. The flow coordinator often picks orders alongside the picking team DCAs. Similarly, two picking team leads work to make sure that the DCAs on their teams complete their orders, and the picking team leads also spend substantial time picking orders themselves. Similarly, there are three packing team leads who work alongside the DCAs performing packing, labeling and loading work in the labeling line, consolidation benches and LTL work areas. Team leads, DCAs and DC support specialists all attend the same daily kick-off meetings conducted by the process managers.

As noted above, although the record does not reflect the wage rates of the team leads, there was testimony that there is some overlap in wage rates among hourly-paid employees in different NEX grades. The team leads have the same supervisors, benefits and working conditions as the DCAs.

I find that the team leads and the flow coordinator share a community of interest with the DCAs, DC support specialists and distribution logistic specialists and that they should be included in an appropriate unit. They perform the same functions and operate the same type of equipment as the DCAs when they are handling the products at the DC and they work alongside the DCAs to perform their job functions. In addition, they have the same supervision, benefits and working conditions as the DCAs. The additional responsibilities in directing the DCAs does not negate their strong community of interest with the DCAs.

Moreover, the Petitioner has failed to establish that the team leads or the flow coordinator¹⁰ are supervisors of the Employer within the meaning of Section 2(11) of the Act. In this regard the Supreme Court has held that the burden of proving supervisory status is on the party asserting it. NLRB v. Kentucky River Community Care, 532 U.S.

¹⁰ As used hereafter in this section, the term team lead also encompasses the flow coordinator.

706, 711-712 (2001). Accordingly, the lack of evidence of supervisory status in the record is construed against the party asserting supervisory status. Armstrong Machine Co., 343 NLRB 1149, fn. 4 (2004).

Team leads do not have the authority to hire, fire, transfer, promote, or discipline employees. They do not prepare work schedules or deal with personnel issues. There is insufficient evidence on the record to establish that a team lead has ever effectively recommended discipline of one of the employees on his team. On the contrary, in one instance where a team lead complained to a process manager that a DCA was not listening to him, the DCA was not disciplined by the process manager.

A team lead may offer a suggestion to a DCA as to how to better perform a task, but any counseling or discipline is imposed by the process managers, or higher management. Moreover, team leads do not prepare or sign performance evaluations. An employee evaluation in evidence that mentions that the Employer would like to see verbal communications on methods to improve efficiency through the team lead is insufficient to establish supervisory status. Significantly, that evaluation was signed by a process manager and an operations manager, but not by a team lead.

Although the Petitioner argues that the team leads monitor and audit the work of the DCAs, placing them in an adversarial role to employees, as noted above the team leads do not evaluate employees or impose any discipline on employees. Rather, any auditing function that may be performed by the team leads is similar to that performed by the DC support specialists or distribution logistic specialists. Although a lead may generate a report listing the number of scans in the department, it is not clear whether or not that report is even given to a process manager. See Arizona Public Service Co., 310 NLRB 477, 480 (1993); Pepsi-Cola Bottling Co., 154 NLRB 490, 493-494 (1965) (relaying reports of inefficiencies, if investigated independently by higher management are insufficient to establish supervisory status).

Although team leads have occasionally told an employee requesting overtime that he could voluntarily stay an hour or two, it is not clear if the team leads independently authorized the overtime, or merely relayed the direction of a process manager or other supervisor on those occasions, and it is not clear whether or not the Employer has established guidelines with respect to overtime or leaving work early which are routinely administered by team leads without the need to exercise independent judgment. In this regard, there are process managers on-site and team leads check with process managers on a variety of issues.¹¹ Similarly, although a team lead may have told a DCA that the DCA could leave early, a team lead cannot force a DCA to leave early, and it is not clear if process or operation managers have authorized team leads to allow DCAs to leave early or if team leads are guided by set Employer procedures in this regard.

Team leads can direct a DCA to perform another function within the DCA grade if work is slow - for example, reassigning a DCA from an offload to a put-away function. However, the record does not establish that this constitutes responsible direction of employees, which is required by the Board to establish supervisory status. Network Dynamics Cabling, Inc., 351 NLRB No. 98, slip op. at 4 (2007) (leadman did not consider relative skills of employees in shifting them from one task or crew to another, and the leadman's direction did not rise above the routine or clerical); see also Oakwood Health Care, Inc., 348 NLRB No. 37, slip op. at 6 (2006) (a direction is responsible if the person directing the performance of the task is held accountable for its performance and the direction is carried out using independent judgment). In terms of assignments, the Petitioner has failed to establish that team leads use independent judgment in making

¹¹ The record reflects that on the night-shift, a team lead may occasionally step in for a process manager on vacation if no other process manager is on the shift. However, the record does not reflect how often this occurs, if the process manager left instructions for the team lead, or if the team lead has to call a supervisor to discuss issues that may arise at times when there is no process manager at the DC.

job assignments. See Oakwood Healthcare, above, slip op. at 4 (to assign under Section 2(11) of the Act refers to the designation of significant overall duties to an employee, rather than an ad hoc instruction that the employee perform a discrete task); Clark Machine Corp., 308 NLRB 555, 555-556 (1992). In this regard, the work is routine and there is no evidence on the record that the team leads analyze the skills of the DCAs in order to determine work assignments or direct employees, or that the DCAs' skills differ significantly from each other. See Croft Metals, Inc., 348 NLRB No. 38, slip op. at 6 (2006) (ad hoc instruction that an employee perform a discrete task during a shift is insufficient to confer supervisory status).

VI. CONCLUSIONS AND FINDINGS

A. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.¹²

B. The appropriate unit should include, at a minimum, all full-time and regular part-time DCAs, DC support specialists, distribution logistic specialists, team leads and the flow coordinator.

C. Since the Petitioner is not willing to proceed to an election in an alternate unit that I find appropriate, I am dismissing the Petition.

¹² The Petitioner argues that the Hearing Officer erred in not requiring the Employer to produce certain subpoenaed documents at the hearing, and that the Employer failed to honor its agreement to provide the Petitioner with a copy of the Grainger Learning Center Catalog after the hearing closed. I find that the Petitioner had an opportunity to present this evidence at the hearing, and to seek enforcement of its subpoena at the hearing, but failed to do so. Moreover the Hearing Officer stated that he would not admit the Grainger Learning Center Catalog in the record as a post-hearing exhibit and the Petitioner did not object. In any event, it appears unlikely that these documents would have affected my findings in this matter.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **June 27, 2008**. Immediately upon the filing of a request for review, copies thereof shall be served on the Regional Director and the other parties. The request may not be filed by facsimile.¹³

Dated this 13th day of June, 2008 at Tampa, Florida.

Karen K. LaMartin, Acting Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

¹³ A request for review may also be submitted by electronic filing. See the attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at www.nlrb.gov for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website.